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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

PIERCE, JEREMY R

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 02/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

App. No.

09/634,381

Applicant(s)

HOOD ET AL.

Examiner

Jeremy R. Pierce

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-- **The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 16-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 14, 2003 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 recites the base section is "formed from a first polymer material, said terminal parts of at least some of said projecting elements are formed from a second polymer material." Are the first and second polymer materials also distinct as in claim 1? If the polymer materials were to have the same limitations as those in claim 1, they should be recited as "the first polymer material" and "the second polymer material" rather than "a first polymer material" and "a second polymer material", respectively.

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This would better indicate that the respective polymer materials are similar in scope to the polymer materials that preceded them. Currently, they could be read to be different than the ones recited in claim 1, thus losing the limitation that the two are "distinct."

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1-3, 5, 7-12, 14, and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Cejka et al. (U.S. Patent No. 6,106,922).

Cejka et al. disclose a material having first and second layers of polymer material where the first layer protrudes into the second layer forming stems (column 2, lines 3-9). Projecting elements extend from the base layer with terminal parts that comprise a second distinct polymer layer (Figures 2 and 3). With regard to claims 2, 3, 11, and 12,

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Cejka et al. disclose the polymers can contain different color pigments (column 9, lines 36-40). With regard to claim 5, Cejka et al. disclose many of the same polymers (column 3, line 58 –column 4, line 5). With regard to claim 7, Cejka et al. also disclose using fillers (column 6, lines 18-20). With regard to claim 8, Cejka et al. disclose using polyethylene (column 5, line 59). With regard to claim 9, Cejka et al. disclose the base layer may have an active surface for providing an adhesive or coating (column 4, lines 14-16). Such adhesive would comprise a slip-resistant sheet. With regard to claim 10, Cejka et al. disclose that in another embodiment, one of the layers is discontinuous, and would thus have open spaces (column 2, line 10). With regard to claim 14, Cejka et al. disclose using conductive fillers (column 6, line 25).

6. Claims 1, 2, 5, 7, 8, 12, 13, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Rawlinson (U.S. Patent No. 4,329,196).

Rawlinson discloses a three-dimensional laminate that comprises a substrate layer and a three-dimensional layer (Abstract). The three-dimensional layer can be made of a material that is chemically different than the substrate layer (column 3, lines 1-3), so the terminal parts of the projecting elements would comprise a distinct polymer from the substrate layer. With regard to claims 2, 7, and 12, both layers may contain pigments (column 3, line 14). With regard to claims 5, 8, and 13, Rawlinson discloses a number of different available polymers (column 2, lines 45-51), including low density polyethylene (column 3, lines 9-10).

7. Claims 1, 6, 9, 10, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Zuiddam et al. (U.S. Patent No. 4,866,808).

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Zuiddam et al. disclose floor mat comprising a plurality of U-shaped plastic profiles (Abstract). The terminal parts that differ from the base section in Zuiddam et al. would be the bristles that come out of the center of the U-shaped projections (Figure 1). With regard to claim 6, the projecting elements have bristles as the core and the U-shaped plastic at its surface. With regard to claim 9, a slip-resistant sheet is provided (column 4, lines 20-24). With regard to claim 10, there are open surfaces (Figure 2).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 4 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cejka et al.

With regard to claim 4, Cejka et al. do not disclose that some of the terminal parts would be a different color than the substrate and some of the terminal parts would be the same color as the substrate. However, Cejka et al. do disclose embodiments wherein the different pigments (column 9, lines 36-40) are used and similar pigments are used in the different polymers (column 14, lines 28-41). It would have been obvious to one having ordinary skill in the art to provide some, but not all terminal parts with different pigments than the substrate layer in order to provide a substrate with a varying pattern and different aesthetics. With regard to claim 13, Cejka et al. do not disclose

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polyethylene with a density between 0.915 and 0.92. However, Cejka et al. disclose using low linear density polyethylene, such as Attane (column 11, line 22) and Exact (column 16, line 31). These trademark polyethylenes can have varying densities, including those in Applicant's claimed range. It would have been obvious to one having ordinary skill in the art to use a polyethylene with a density between 0.915 and 0.92, since Cejka et al. disclose using low density polyethylene, and it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416.

10. Claims 3, 4, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rawlinson.

Rawlinson does not disclose differentially pigmenting the two polymers. It would have been obvious to one having ordinary skill in the art to add different pigment to the two layers in order to provide a substrate with different aesthetics. Similar motivation exists for having only some, but not all terminal parts of the projecting elements a different color.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: U.S. Patent No. 4,361,606 to Butler et al. and U.S. Patent No. 3,590,109 to Doleman et al. (U.S. Patent No. 3,590,109).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (703)

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605-4243. The examiner can normally be reached on Monday-Thursday 7-4:30 and alternate Fridays 7-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Jeremy R. Pierce
Examiner
Art Unit 1771

February 19, 2003



ELIZABETH M. COLE
PRIMARY EXAMINER